

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAMUEL J. POTTS,

Movant.

**Consolidated Civil Case
Nos. 10-C-771, 11-C-1142
(Criminal Case Nos.
09-Cr-58, 97-Cr-205)
USCA No. 14-2493**

DECISION AND ORDER

Pro se Movant Samuel J. Potts (“Potts”) has filed a motion for leave to appeal *in forma pauperis* (ECF No. 90) from this Court’s final decision and order and judgment entered on August 13, 2013, dismissing his motions to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (ECF Nos. 65, 66.) A movant may only proceed *in forma pauperis* on appeal if the Court finds that he is indigent and that he is taking his appeal in good faith. 28 U.S.C. § 1915(a)(3). To find that an appeal is in good faith, a court need find only that a reasonable person could suppose the appeal has some merit. *Walker v. O’Brien*, 216 F.3d 626, 631-32 (7th Cir. 2000). On the other hand, an appeal taken in bad faith is one that is based on a frivolous claim; that is, a claim that no reasonable person could suppose has any merit. *Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir.

2000). District courts must not “apply an inappropriately high standard when making good faith determinations,” and denial of a certificate of appeal does not necessarily warrant denial of *in forma pauperis* status. *Pate v. Stevens*, 163 F.3d 437, 439 (7th Cir. 1998).

With respect to Pott’s indigency, the current fee for filing an appeal is \$455.00, which includes a \$5.00 docketing fee. Although Pott earns a prison salary, he regularly deletes his funds and, therefore, is unable to pay the fee for filing an appeal.

By its Decision and Order, the Court declined to issue a certificate of appealability. (ECF No. 65.) By his current motion, Potts states that his issue on appeal is the violation of his right to due process. Though cognizant that the standard for permission to appeal *in forma pauperis* is more lenient than that applied to a request for a certificate of appealability, *Walker*, 216 F.3d at 631, this Court cannot conclude that a reasonable person would conclude that the issue Pott intends to appeal has merit. Therefore, this Court certifies that Pott’s appeal is taken in bad faith.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS
HEREBY ORDERED THAT:**

Pott's motion for leave to appeal *in forma pauperis* (ECF No. 90) is
DENIED, and this Court certifies that Pott's appeal is taken in bad faith.

Dated at Milwaukee, Wisconsin this 7th day of November, 2014.

BY THE COURT


Hon. Rudolph T. Randa
U.S. District Judge